APPENDIX

ORDER AND INFORMAL OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the fifteenth day of April, one thousand nine hundred and eighty two.

Present:

HONORABLE IRVING R. KAUFMAN,
HONORABLE WILLIAM H. TIMBERS,
HONORABLE ELLSWORTH VAN GRAAFEILAND,

Circuit Judges,

82-6070

IN RE GRAND JURY PROCEEDINGS INVOLVING ROBERT STEPENY,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Southern District of New York.

Order and Informal Opinion of the United States Court of Appeals for the Second Circuit

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was submitted.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

1. This is an appeal from an order entered by Judge Edelstein adjudging Stepeny in civil contempt for his refusal to answer questions put to him by a grand jury after having been granted immunity from prosecution pursuant to 18 U.S.C. §6002-03 and after having been ordered to testify. Judge Edelstein's order provided that Stepeny be confined until he is willing to testify, or until the term of the grand jury expires, or for eighteen months, whichever occurs first. The order also stayed the running of Stepeny's prior federal criminal sentence which he was then serving.

2. It is beyond argument that the district court has the power to stay a federal criminal sentence when imposing civil contempt sanction for refusal to answer questions before a grand jury. *United States v. Dien*, 598 F.2d 743 (2d Cir. 1979) (per curiam). *See also, United States v. Chacon*, 663 F.2d 494 (4th Cir. 1981); *In re Application of the United States Senate Permanent Subcommittee on Investigations*, 655 F.2d 1232 (D.C. Cir.), *cert. denied sub nom., Cammisano v. United States Senate Permanent Subcommittee on Investigations*, 102 S.Ct. 641 (1981); *In re Garmon*, 572 F.2d 1373 (9th Cir. 1978).

3. The claim that being held in contempt is a violation of the double jeopardy clause of the Fifth Amendment as a second punishment for refusal to cooperate with regard to Stepeny's guilty

plea is frivolous. This Court pointed out inrejecting the same claim in *United States v. Dien, supra*, 598 F.2d at 743, "[h]is refusal now to testify before the Grand Jury is an act separate and distinct from the prior conviction for narcotics upon which his prior federal sentence is based."

4. There was no error in imposing a civil contempt sentence without providing a jury trial. It has long been settled that there is no right to a jury in civil contempt proceedings. *Shillitani v. United States*, 384 U.S. 364 (1966); *United States v. Handler*, 476 F.2d 709 (2d Cir. 1973).

5. Stepeny's other claims are equally without merit.

6. Accordingly, the order of the district court is affirmed.

s/ Irving R. Kaufman
IRVING R. KAUFMAN

s/ William H. Timbers
WILLIAM H. TIMBERS

s/ Ellsworth Van Graafeiland
ELLSWORTH VAN GRAAFEILAND,
Circuit Judges.